

RIVERS MANAGEMENT ADVISORY COMMITTEE

Meeting Minutes
January 23, 2008
DES Rooms 112/113
9:30 am – 12:30 pm

Members Present

Michele L. Tremblay, Vice Chair
Alan Bartlett
Bob Beaurivage (via phone)
Johanna Lyons
Jennifer Czysz
Anne Krantz
John Magee
Walter Morse
Kathryn Nelson
Kevin Nyhan
Allan Palmer

Representing

Conservation Interests
Agricultural Community
Public Water Suppliers
Dept. Resources & Economic Development
NH Office of Energy and Planning
Historical & Archaeological Interests
NH Fish & Game Department
NH Fish & Game Commission
Local River Management Advisory Comm.
NH Dept. of Transportation
Business and Industry Association

Term

Dec. 28, 2008	V
Mar. 22, 2009	V
Sept. 28, 2010	V
Indefinite	NV
Indefinite	NV
June 15, 2010	V
Indefinite	NV
Sept. 28, 2009	V
Sept. 5, 2010	V
Indefinite	NV
Sept. 28, 2010	V

Members Absent

Ken Kimball, Chair
William Heinz
Gail McWilliam Jellie
Ted Sutton

Recreational Interests
Granite State Hydropower
NH Department of Agriculture
Municipal Government

Dec. 28, 2008	V
Jan. 5, 2009	V
Indefinite	NV
Nov. 16, 2008	V

Guests Present

Michelle Hamm

Contoocook and North Branch Rivers Local Advisory Committee

DES Staff Present

Steve Couture
Laura Weit
Paul Currier
Jenn Rowden
Carolyn Guerdet

NHDES Rivers Coordinator
NHDES Lakes and Rivers Asst. Planner
NHDES Administrator, Watershed Mgmt Bureau
NHDES Lakes and Rivers Asst. Planner
NHDES Administrative Assistant

The Meeting Was Called to Order

Michelle Tremblay, Vice-Chair, called the meeting to order at 9:39 AM.

I. 9:30 – 9:45 Introductions/Minutes/Committee Business

1) December 21, 2007 Joint LMAC/RMAC Meeting Summary - Vote Required

- ***Kathryn Nelson made a motion to accept the December 21, 2007 Joint LMAC/RMAC Meeting Minutes with correction noted, Walter Morse seconded the motion and the vote was unanimous.***
- ***Allen Palmer made a motion to accept the January 14, 2008 Conference Call Minutes, Kathryn Nelson seconded the motion and the vote was unanimous.***

II. 9:45 – 10:00 Long-Range River Management Plans (483:10-a)

Jennifer Rowden reviewed the selection criteria for the pilot study for designated rivers. All designated rivers were evaluated using the selection criteria. The Exeter, Connecticut, Piscataquog, and Souhegan Rivers scored the highest. The Exeter River was mainly recommended for the pilot study due its manageable state owned land acreage and concurrent local level watershed management planning activities.

- ***Kath Nelson moved that the RMAC support the commencement of a pilot study on the Exeter River to develop a long-range management plan for state-owned land that includes DOT Right-of-Ways in the river corridor and tributary drainage area, Anne Krantz seconded the motion and the vote was unanimous.***

Staff time will be tracked, so there will be no additional cost. Staff time that would have been spent on other RMPP duties will be allocated to this project instead. The next steps will be to 1) develop a work plan, 2) solicit data from the different state agencies, 3) meet with the Exeter Local River Management Advisory Committee and 4) facilitate meetings to develop the plan. An intern has been hired to perform a GIS co-occurrence wildlife habitat analysis on the state-owned properties within the Exeter River Tributary Drainage Area.

V. 11:30 – 12:15 Surplus Land Reviews (SLR) - Disposition of state-owned properties – Laura Weit, NHDES

1) DOT 08-01: Town of Colebrook (Connecticut River)

The Connecticut River Joint Commissions has requested that the RMAC ask for an extension, so the Headwaters Subcommittee can review and provide input on the proposed surplus land disposal. The Headwaters Subcommittee is not scheduled to meet until February 5th.

Requesting a 30 day extension from the 60 day deadline would require comments sent by March 18th to DOT.

- ***Kathryn Nelson made a motion to request a 30 day extension from DOT for the review of this property, second by Anne Krantz and the vote was unanimous.***

VII. Next Meeting Date(s):

The next meeting will be held on March 5, 2008 to supply comments to DOT and review legislation, pending the availability of the chair.

It was then proposed to have the next meeting on June 5, 2008. It may be an offsite meeting with a canoe trip.

III. 10:00 – 10:45 Natural Rivers Protection (483:9) for North Branch of Piscataquog River – Steve Couture, NHDES

Steve distributed a handout from the Piscataquog River Local Advisory Committee (PRLAC). He explained that this is a bridge replacement project on the Piscataquog River at the downstream end of the natural segment. The issue is the interpretation of protecting natural segments. The Piscataquog River was designated in 1993, it has three natural segments and this project involves the north branch segment. The segment extends to the bridge. There is no definition of channel in the RSA or in the Wetlands statute. Questions to address include: 1) What is the intent of the RSA, is the RSA intent to protect the water of the river regardless if it is in the channel or not? 2) What is protected under the RSA? 3) What does this mean for this project? The two paragraphs that are being considered within the RSA are:

“No dams or structures or improvement that impedes or significantly alters the free flowing condition or natural character of the river or segment...” Here we are focusing on the natural character of the river or segment.

“No channel alterations shall be permitted, except that the commissioner may approve temporary channel alterations in conjunction with the repair or maintenance of a bridge, road, or riprap which is in place... “

The question is: Does this project meet the intent of protecting the natural segment according to these definitions, the way that is proposed presently?

Tom Marshall, consultant for SEA Consultants and hired by the town of Weare described the Abijah Bridge replacement project. It is a two lane complete replacement of the obsolete one lane structure currently there.

Steve spoke in regards to RSA 483:9 p.1, whether or not this project, as proposed, would “significantly alter or change the natural character of the river or segment”. The ‘or’ statements should be the ones to be concerned with. Mr. Marshall responded that the existing banks would be improved with the proposed plan. The town is willing to do plantings. The LAC letter speaks to the natural character.

John Magee, a member of the PRLAC, spoke to the comments received in the memo from PRLAC. PRLAC did not comment on RSA 483:9, they commented only on paragraph 1, the natural character. They wanted a stabilization technique more inline with the natural character, if feasible. This has been a five year process already. Steve noted the town is willing to do what PRLAC has requested.

RSA 483:9 does take safety into consideration, if a project is solely denied because of a protection measure; then an appeal per RSA 483:12-a, II can be made to the DES Commissioner, who can review the request.

Michele Tremblay, summarized the issue: As this is a replacement, the RMAC advises the Commissioner, so the RMAC can express concerns over weakening statute. We can express our concerns to the Commissioner and indicate it has been discussed from every interest sitting at this table, including public safety, and that our primary concern is that we don't want to see any weakening of the statute. We recognize the other issues and we have taken them into consideration as well as the local input from PRLAC.

A discussion of the definition of ‘channel’ was then entered into. It was decided staff could develop a draft definition of channel, apply it to this particular case, and make a recommendation as to what the law says.

- ***Kathryn Nelson made a motion to write a letter to the commissioner stating our concern about the precedent for weakening RSA 483:9, I & III. The specific concerns that should be taken into consideration when making this decision are the natural aspects of the proposed projects being consistent with the previous structure and also directing staff to come up with a recommended definition for stream channel based on other statute and definitions in DES rules. Second by Allan Palmer.***

Discussion:

Paul C. suggested the RMAC deny the project based on its interpretation of RSA 483:9, but allow the appeal process to move forward.

Jennifer C. asks that the letter not dwell on the concerns and the negatives but also state some of the positives that are coming out of this project.

Anne K. noted that in the original rivers designation program it should have said 'up to but not including the bridge'.

Michele T. concluded the content of the letter to the commissioner is to include all of the issues that informed our discussion, we had a presentation by the consultant, we considered the PRLAC memo, we're raising these concerns and when the commissioner makes his decision, we wish all of that be taken into consideration and at the same time we're directing staff to come up with a definition of stream channel. We are citing the memo from PRLAC and we're citing the information from the town. It is the commissioner's call and this committee is made up of broad interests.

Vote was in the affirmative with one nay vote.

There is a public hearing scheduled for this project on January 31, 2008.

Walter M. had to leave and at this time there is no longer a quorum.

It was decided to try and contact Bob B. via phone to have a quorum for a legislative discussion.

IV. Legislation/Rulemaking/Other

3) NHDES CSPA Administrative Rules

Kath N. reported that on January 16th she attended the rules committee hearing for the Shoreland Protection Act. Written comment will be taken until January 28th. RMAC submitted a letter supporting the rules. On February 1st DES will hear comments. JLCAR will hear them on February 15th. At the meeting concerns were raised about whether the local or state permit should be required first. DES indicated that there would be immediate follow-up rule making soon after April 1st to model the permit more on the subsurface permit process and the permit by notification.

Jen C. noted the proposed rules say the municipality had to go first. There was a conflict identified that all municipal flood plain ordinances for communities that participate in the national flood insurance program, are required to request and seek state and federal permits before the municipality may approve and develop the flood plain. As some regulations overlap they sometimes are in direct conflict with each other.

Bob Beaurivage joins the meeting via phone at 11:48. Everyone reintroduced themselves so that Bob knew who was in attendance.

1) 2008 Legislation – Steve Couture, NHDES

Senate Bill 435

This defines direct and indirect impacts within the wetlands statutes.

- ***Kathryn Nelson made a motion to support Senate Bill 435 that adds indirect impacts which brings us more inline with current science associated with wetland hydrology. Second by Anne Krantz.***

DES believes it already has this authority in existing statute so DES has no position on this bill at this time. Kath N. noted this is not a very known or carried out authority and to clarify

she believes it is a very good bill. John M. stated the Army Corp of Engineers has oversight over the state for wetlands permitting and they have a direct and indirect impacts text.

- ***The vote was two in favor and three opposed. The RMAC will not be taking a position.***

Senate Bill 510

Seeks to reduce the fees that could be collected for alteration of terrain permits.

- ***Anne Krantz made a motion to oppose this bill. Second by Kathryn Nelson and the vote was unanimous.***

House Bill 1538

A DES requested bill. Relative to RSA 12-E, hard rock mining but not sand and gravel operations.

- ***Allan Palmer made a motion to untrack this bill from RMAC tracking. Second by Anne Krantz and the vote was unanimous.***

House Bill 1471

A DES requested bill. This is in response to the Legislative Budget Assistant audit in regards to the time limits for excavating and dredging permits.

- ***Kathryn Nelson made a motion to support HB 1471 with wording that also points to this audit process, since we want to see a more comprehensive approach. Not only does the RMAC support this, but we want to consider the recommendations that came out of the August 2007 audit and move forward with implementing them. Second by Allan Palmer.***

Steve C. clarified that this is not an ongoing audit process. The audit process is complete; it was an evaluation of the wetlands program.

Michele T. pointed out that comments from the public have not been solicited, that the comment period hasn't closed yet. Any changes being made piece-meal or wholesale right now are being made on the outcome of the audits, and do not include public input.

Steve C. added that this is in subcommittee; it has yet to be heard at executive session.

Vote in favor was unanimous.

House Bill 1223

This would expand an exemption to grandfathered sites to any property that was acquired after August 24, 1979 and exempt them from local regulation. Steve C. said that most of the sand and gravel sites are within river corridors.

- ***Allan Palmer made a motion to untrack this bill. Second by Bob Beaurivage.***
Jen C. did not agree with giving a blanket exemption to local ordinances. Zoning ordinances are there to implement the master plans which are the community's vision. Kath N. saw it as overriding local ordinances.

Vote in opposition was unanimous.

Allan P. and Bob B. agreed to withdraw the above motion.

- ***Kathryn Nelson made a motion to oppose HB 1223 on the grounds that it is not in the spirit of the Rivers Protection Act and it is a threat to local control. Second by Ann Krantz and the vote was unanimous.***

House Bill 1473

In regards to the use of fertilizer. It was noted agriculture is exempt from CSPA. The RMAC has no position on this bill.

House Bill 1295

This bill establishes a commission to study issues relating to stormwater. The membership has been significantly altered and scaled back. Representatives from the RMAC and LMAC were replaced with members of the NH Rivers Council and NH LAKES at executive session yesterday.

- ***Allan Palmer made a motion to support the bill only if the RMAC is re-added to the list of those represented on the study commission. Second by Kathryn Nelson and the vote was unanimous.***

This is now on the Consent calendar so action will be needed in the Senate.

House Bill 1581

Provides the framework for all municipalities to develop stormwater utilities and provides the framework for doing so. DES is in support of this.

- ***Kathryn Nelson made a motion to support HB 1581. Second by Bob Beaurivage and the vote was unanimous.***

House Bill 1353

Allows municipalities to have a vote on any large groundwater withdrawals. DES is opposed to this bill.

- ***Allan Palmer made a motion to oppose. Second by Bob Beaurivage. Vote was four in favor and one opposed. Motion passed.***

Senate Bill 452

Relevant to integration of transportation planning. Kevin N. and Jen C. said that DOT and OEP, respectively, are tracking this and it is consistent with their agency and the state development plan. DES has no position. Jen noted the correction of the RSA number.

- ***Allan Palmer made a motion to untrack. Second by Anne Krantz and the vote was unanimous.***

Senate Bill 396

Relevant to the establishment of a statewide transportation policy.

- ***Allan Palmer made a motion to untrack. Second by Bob Beaurivage and the vote was unanimous.***

House Bill 1439

Relative to a moratorium on large groundwater withdrawals. DES is opposed to this.

- ***Allen Palmer made a motion to oppose. Second by Bob Beaurivage and the vote was unanimous.***

This will be followed up on if it moves into the Senate

Senate Bill 413

Authorizing DRED to retain the administrative fee for disposals of state lands originally acquired by DRED. Johanna L. said that is a process that is being made into law.

- ***Allan Palmer made a motion to untrack. Second by Kath Nelson and the vote was unanimous.***

House Bill 1535, House Bill 1429, House Bill 1568, House Bill 1128, House Bill 1154, and House Bill 1511

- ***Kathryn Nelson made a motion to untrack all of the bills listed above. Second by Allan Palmer and the vote was unanimous.***

Michele T. asked Bob B. to set aside March 5th and June 5th for the next RMAC meetings, depending on Ken's availability.

Michele T. mentioned that Tuesday, January 29th, the Granite State Environmental Voters are conducting their annual legislative breakfast from 7:30 to 9:30 at the Holiday Inn in Concord.

2) NHDES Wetlands Rules for Vernal Pools

A definition for vernal pools and delineation for minor or major projects would be added to the administrative rules; this change is supported by DES.

- ***Kathryn Nelson made a motion to support Env. – Wt 100 & 300 for vernal pools. Second by Anne Krantz and the vote was unanimous.***
- ***Kathryn Nelson made a motion for reconsideration. Second by Anne Krantz and the vote was unanimous.***
- ***Kathryn Nelson made a motion to support the DES Wetlands Rules for vernal pools. Second by Anne Krantz. Vote was three in favor and three in opposition. Motion dies.***

Meeting adjourned at 12:43 pm.